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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. 3-06-70639 EDL
)	
Plaintiff,	)	[PROPOSED] ORDER AND STIPULATION
	)	(1) VACATING DECEMBER 19, 2006
v.	)	HEARING AND SETTING JANUARY 17,
	)	2007 HEARING; AND (2) WAIVING TIME
FRANK LOUIS SMEDILE,	)	UNDER RULE 5.1 AND EXCLUDING
	)	TIME FROM NOVEMBER 14, 2006 TO
Defendant.	)	JANUARY 17, 2007 FROM THE SPEEDY
	)	TRIAL ACT CALCULATION (18 U.S.C. §
	)	3161(h)(8)(A))

The parties appeared before the Honorable Edward M. Chen on November 14, 2006. With the agreement of the parties, and with the consent of the defendant, the Court enters this order (1) vacating the December 19, 2006 preliminary hearing date and scheduling a new preliminary hearing date of January 17, 2006 at 9:30 a.m.; (2) documenting the defendant's waiver of time limits under Federal Rule of Criminal Procedure 5.1; and (3) documenting the exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A), from November 14, 2006 to January 17, 2007. The parties have agreed, and the Court finds and holds, as follows:

1. The defendant waived the time limits for a preliminary hearing under Federal Rule of Criminal Procedure 5.1. Failure to grant the requested continuance would unreasonably deny both defense and government counsel reasonable time necessary for effective preparation, taking

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1 into account the need to review the universe of electronic evidence in the case prior to charging
2 the case and negotiating a possible disposition, and would deny the defendant continuity of
3 counsel. Although the government was expecting its forensic analysis would be complete by the
4 currently scheduled preliminary hearing date of December 19, 2006, the government still has not
5 received reports from the forensic analysis that is to be done on electronic evidence seized from
6 the Defendant at the airport and via search warrant at his home.

7 2. Counsel for the defense believes that postponing the preliminary hearing is in his
8 client's best interest, and that it is not in his client's interest for the United States to indict the
9 case before January 17, 2007. The parties expect to review the electronic discovery and discuss
10 the possibility of a pre-indictment resolution of the case.

11 3. The defendant has agreed to an exclusion of time under the Speedy Trial Act. Failure
12 to grant the requested continuance would unreasonably deny both government and defense
13 counsel reasonable time necessary for effective preparation, taking into account the exercise of
14 due diligence, and would deny the defendant and the government continuity of counsel.

15 4. Given these circumstances, the Court finds that the ends of justice served by excluding
16 the period from November 14, 2006 to January 17, 2007, outweigh the best interest of the public
17 and the defendant in a speedy trial. Id. § 3161(h)(8)(A).

18 5. Accordingly, and with the consent of the defendant, the Court orders that the period
19 from November 14, 2006 to January 17, 2007, be excluded from Speedy Trial Act calculations
20 under 18 U.S.C. § 3161(h)(8)(A) & (B)(iv).

21 6. The Court hereby vacates the December 19, 2006 preliminary hearing/arraignment
22 date and schedules a new preliminary hearing/arraignment date of January 17, 2007, at 9:30 a.m.,
23 before the duty Magistrate.

24 ///

25 ///

1 IT IS SO STIPULATED.

2 DATED: December 15, 2006

3 /S/
4 TRACIE L. BROWN
Assistant United States Attorney

5 DATED: December 15, 2006

6 /S/
SETH CHAZIN
Attorney for FRANK LOUIS SMEDILE

7 IT IS SO ORDERED.

8
9 DATED: December 19, 2006

